

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 10009 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RABARI KALYANBHAI SARJANBHAI & 2 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR EE SAIYED for Applicant(s) : 1 - 3.

Mr. KT Dave, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

MR PRAVIN G VAGHELA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2007

ORAL JUDGMENT

Rule. Shri KT Dave, learned APP waives
service of Rule on behalf of respondent No.1
State and Shri PG Vaghela, learned advocate

waives service of Rule on behalf of respondent No.2 original-complainant. With consent of the learned advocates appearing for the parties the matter is taken up for final hearing today.

2. By way of this application under Section 482 of the Code of Criminal Procedure the applicants original-accused have prayed for an appropriate order to quash and set aside the impugned complaint being M. Case No. 18/2007 registered with Deesa police station.

3. Criminal Case No. 132/2007 has been filed by respondent No.2 herein original-complainant in the court of learned JMFC, Deesa for offences punishable under Section 365, 504, 506(2) read with Sec. 114 of the Indian Penal Code and in the said complaint the learned JMFC, Deesa passed order on 14.8.2007 directing the P.I., Deesa Rural police station for holding enquiry under Section 156(3) of the Cr.P.C. and thereafter the said complaint was sent to the Deesa Rural police

station which was registered as 'M. Case No. 18/2007 on the file of Deesa police station. Being aggrieved and dissatisfied with the same the applicants herein original-accused have preferred the present application under Section 482 of the Code of Criminal Procedure.

4. It is alleged in the complaint by the original-complainant that betrothal had taken place between him and one Bhavnaben, daughter of Kalyanbhai Rabari and they have decided to marry; however family members of the said Bhavnaben were not in favour of said marriage; the said Bhavnaben had run away on 24.6.2007 and went to original-complainant; they decided to marry; they have married on 5.7.2007; they were staying together; all of a sudden the accused persons abducted the said Bhavnaben and they are not allowing Bhavnaben to meet other persons; and therefore it is alleged that the applicants have

committed the offences as alleged in the

complaint.

5. Shri Saiyed, learned advocate appearing on behalf of the applicants has submitted that there is no such marriage taken place between the said Bhavnaben and the original-complainant and in fact the said Bhavnaben has married with one Devsibhai Bhurabhai Rabari. He has requested to record the statement of the said Bhavnaben. He has also relied upon photographs of the marriage between Bhavnaben and the said Devsibhai Rabari. He has further submitted that the said Bhavnaben is staying happily with the said Devsibhai Rabari without any pressure and/or compulsion; that she is at present at her in-laws' place and therefore they have not committed any offence as alleged under Section 365, 504, 506(2) r/w. 114 of the I.P.C., and therefore it is requested to allow the present application.

6. The application is opposed by the learned

advocate appearing on behalf of respondent No.2, original-complainant. It is submitted that looking to the averments and allegations in the complaint prima facie cognizable offences are made out and therefore the impugned complaint is not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C. It is submitted that as such said Bhavnaben had married with the original-complainant; they have also stayed together; and their marriage was also registered before the Notary Public. It is submitted that the statement of said Bhavnaben is under compulsion and/or under the pressure of family members and therefore it is requested to dismiss the present application.

7. Heard the learned advocates appearing on behalf of the respective parties. At the outset it is required to be noted that this Court had considered the statement of the said Bhavnaben in the Chamber in presence of the learned Addl.

Public Prosecutor and original-complainant. The said Bhavnaben in no uncertain terms has made a statement that she is married with one Devsibhai on 5.8.2007 and is staying at her in-laws' place happily without any pressure and/or compulsion from anybody. She has also specifically denied the factum of any marriage between herself and the original-complainant and the said statement is made in the presence of original-complainant himself. She has also submitted that she was not abducted and/or kidnapped by any of the applicants. In view of the above statement and the affidavit of the said Bhavnaben it cannot be said that the applicants have committed any offence as alleged under Section 365 of the IPC. Considering the statement of the said Bhavnaben and the affidavit, the impugned complaint against the applicants for the offences under Section 365 IPC requires to be quashed and set aside. So far as the complaint against the applicants for the offences under Section 504, 506(2) read with Section 114 of the IPC are concerned, looking to

the averments and allegations in the complaint, the same require further investigation as on bare reading of the complaint prima facie commission of cognizable offences is made out and it further requires investigation. Under the circumstances, the impugned complaint qua the said offences under Section 504, 506(2) read with Section 114 of the IPC is not required to be quashed and set aside in exercise of powers under Section 482 of the Code of Criminal Procedure. After the investigation is over and if it is found that no case is made out against the applicants for the said offences, the concerned Investigating Officer may submit an appropriate report for the same and chargesheet can be filed against the applicants which can be dealt with in accordance with law.

8. For the reasons stated above, the application succeeds in part. The impugned complaint being M. Case No. 18/2007 with Deesa police station is hereby quashed and set aside

against the applicants for the offences under Section 365 of the Indian Penal Code only. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

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